

# Mental Health Evaluations 101

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Presented By

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# Fitness to Proceed (a/k/a legal competency)

- Evaluations for Fitness to Proceed (FTP) are the most common forensic evaluations
  - Estimated 60,000 per year in USA
  - Estimated 325-350 per year in Montana

# The Semantics of Mental Illness in Montana:

- ***Mental Illness***: *Not specifically defined in MCA but incorporated into other terms*
- ***Mental Disease or Defect***: *MCA 46-14-101(2)(a): “[A]n organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking or judgment to such an extent that the person requires care, treatment, and rehabilitation.”*
  - **NOT**: *an abnormality manifested only by repeated criminal or other antisocial behavior*
  - **NOT**: *a developmental disability )53-20-102, MCA*
  - **NOT**: *intoxication*
  - **NOT**: *addiction*

# The Semantics of Mental Illness in Montana:

- ***Mental Disorder:*** MCA 53-21-102 (9) (a): “[A]n organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions”
  - **NOT:** addiction or intoxication, MR or epilepsy
  - However, a mental Disorder may **co-occur** with addiction or chemical dependency
  - **MCA and DSM IV-TR definitions are consistent**
- ***Developmental Disability:*** MCA 53-20-102): a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability
- ***Mental Retardation:*** is not directly defined in MCA but is referenced in both MCA (above) and DSM-IV-TR

# 46-14-103, M.C.A.

As a result of a mental disease or defect or developmental disability, a person is unable to:

- (a) **understand** the proceedings against him/her
- (b) **assist** in his/her own defense

*See, e.g., State v. Santos*, 273 Mont 125 (1995); *State v. Austad*, 197 Mont 70 (1982);

# *Dusky v. United States,* 362 U.S. 402 (1960)

The test for legal competency must be “whether [a defendant] has sufficient **present ability to consult** with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as **factual understanding of the proceedings** against him.”

# Other types of competency evaluations

- (1) competency to waive Miranda warnings;
- (2) competency to confess;
- (3) competency to plead guilty;
- (4) competency to waive trial by jury;
- (5) competency to waive counsel;
- (6) competency to be sentenced;
- (7) competency to be executed

*Godinez v. Moran*,  
509 U.S. 389, 398 (1993)

“We reject the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the *Dusky* standard.”



# What do I do when the question of my client's mental competency becomes an issue ?

- **Develop a Referral Question**

- **Remember the semantics (FTP is a.k.a. Competency)**
- A **referral question** is a short and specific written question sent by YOU (the attorney) to the expert regarding a **specific mental health** issue you need answered directly related to your case (e.g. Issues related to competency to proceed, competency at the time of the offense, can client assist in his/her own defense, etc.).
  - The question(s) are related to the mental health of the client now, in the past, and/or at the time of the offense.

The **referral question** addresses the questions, issues, and concerns that are prompting you to make the referral?

In other words, what did the client say or do (now or in the past) that leads you to the conclusion that a mental health issue may be present now or in the past that may effect the outcome of your case (e.g. played a role in their offense).

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The issue of fitness develops once you have reason to believe that your client may not be able to understand the charges or to assist you in defending the case.

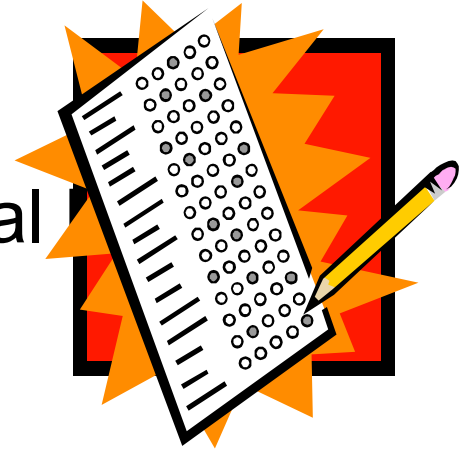
**Q:** How is this determined?

**Ans:** Through a mental health assessment performed by a qualified mental health expert. The expert will use standardized tests to assist in the evaluation.



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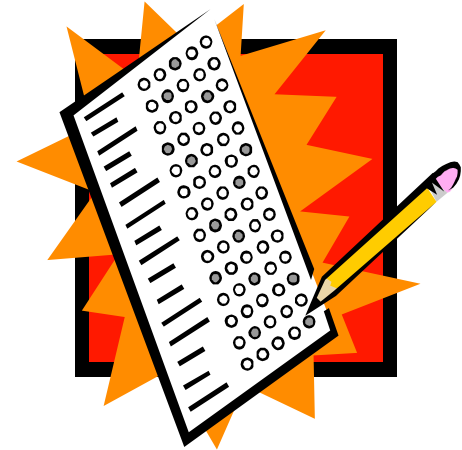
# Tests and Assessments



- As part of the **Screening**, the mental expert will utilize the following:
  - Demographic information
  - **Referral question**
  - Social, family, educational, economic, military, occupational history
  - Collateral information (i.e. other professionals working on the case)
  - Current functional impairments
  - During all of this, the expert is assessing the client's behavior!

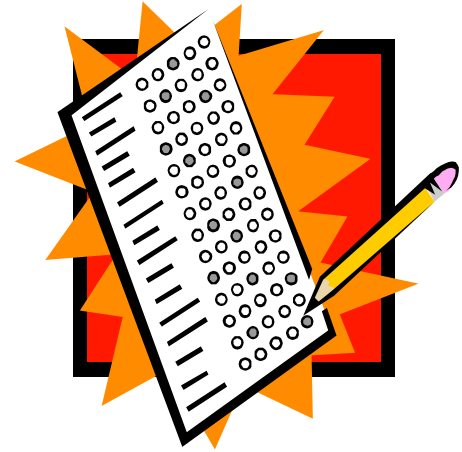
# Tests and Assessments

- The expert will also perform a **Mental Status Exam (MSE)**
  - Orientation
  - Affect
  - Insight
  - Judgment
  - Abstract reasoning ability
  - Memory
  - Thought content
  - Speech patterns
  - H&D
  - Risk Factors (suicidal/homicidal, substance use)

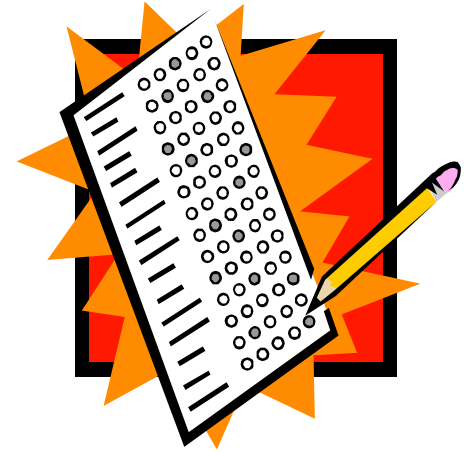


# Tests and Assessments

- Standard Battery of Tests
- Methods employed are to be accepted by the medical or psychological profession (MCA 46-14-202)
- Based on the referral questions, tests will be chosen dependant on what the test purports to measure



# Tests and Assessments



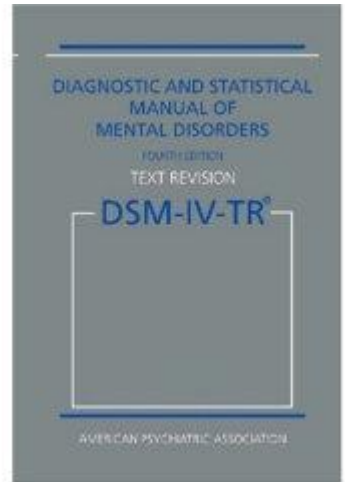
- In addition to the **Screening** and **MSE** a comprehensive battery would consist of a(n):
  - Intelligence test
    - WAIS, WISC
  - Projective Test
    - Rorschach, TAT, CAT
  - Personality Test
    - MMPI
  - Competency to Stand Trial (CST) instrument
    - TOMM, McGarry's CST, McCAT-CA, CAST-MR, CAI, FIT-R, ECST-R, GCCT, Miller's

# Assessment Tools

- [AdultAssessmentTools.pdf](#)
- [JuvAssessmentTools.pdf](#)

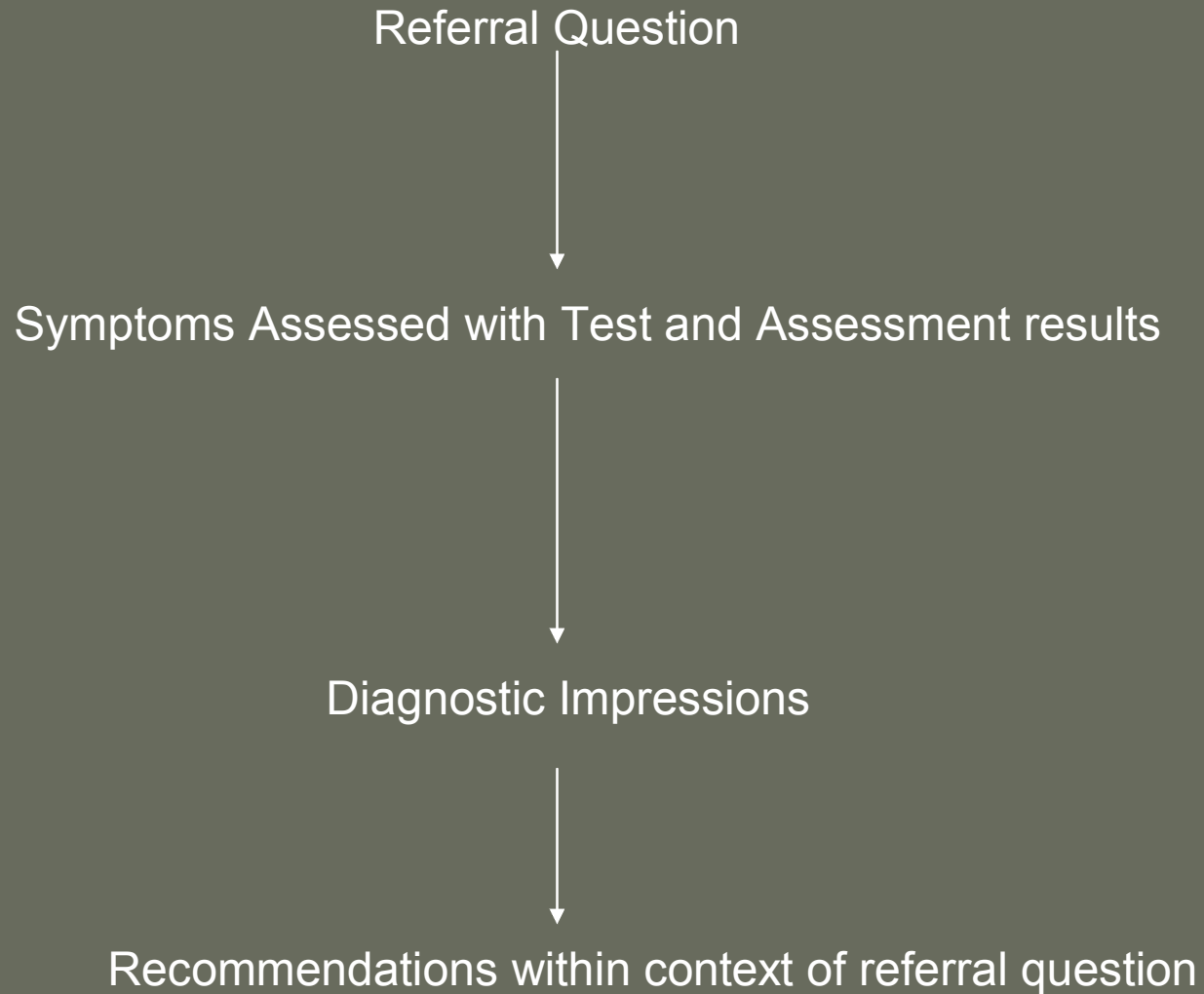


# Assessment Results and Recommendations



- Diagnostic Impressions—Multi-axial
  - DSM IV-TR
    - Axis I            Clinical syndromes
    - Axis II            Personality D/O, MR
    - Axis III            Medical conditions
    - Axis IV            Psychosocial stressors
    - Axis V            GAF
  - Least Restrictive Environment
    - 53-21-120
- Ask yourself: Did I get my referral question answered?

Diagrammatically, here's how it looks:



# Look to the future

## Consistency

- With the process (want to Get IT right!)
- Tests used/assessment procedures
- Fees charged
- If X then Y procedures and what to do If X then Z

# So . . .

- Using proper protocol will result in a more powerful presentation for your client.
- Questions about this material or about a specific case? Feel free to email the OPD mental health consultant:

[drlaura@mt.gov](mailto:drlaura@mt.gov)